

RESOLUTION NO.: R-2012-109

*Authorizing the City Manager to execute a Bill of Sale and Gift Agreement
between the City of Columbia and AgFirst Farm Credit Bank
for the acceptance and relocation of art donated to
the City of Columbia by AgFirst Farm Credit Bank*

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 4th day of December, 2012, that the City Manager is authorized to execute the attached Bill of Sale and Gift Agreement between the City of Columbia and AgFirst Farm Credit Bank for the acceptance and relocation of art donated to the City of Columbia by AgFirst Farm Credit Bank.

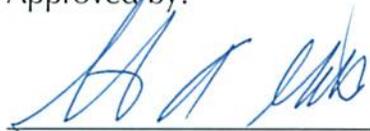
Requested by:

Councilmember Baddourah



Mayor

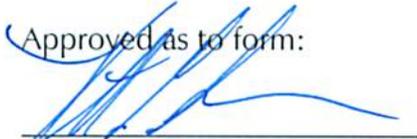
Approved by:



City Manager

City Manager

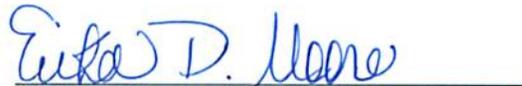
Approved as to form:



City Attorney

City Attorney

ATTEST:



City Clerk

Introduced: 12/4/2012

Final Reading: 12/4/2012

**BILL OF SALE AND GIFT AGREEMENT
(Resolution R-2012-109)**

This BILL OF SALE AND GIFT AGREEMENT (this "Agreement") is delivered and entered into to be effective as of the 14th day of December, 2012 (the "Effective Date") by and between **AgFirst Farm Credit Bank**, a federally chartered farm credit bank (the "Donor"), and the **City of Columbia, South Carolina**, a municipality of the State of South Carolina (the "City").

Background

The Donor owns that certain outdoor sculpture known as the "Busted Plug" created by South Carolina artist Blue Sky and more fully described on Exhibit A attached hereto (the "Sculpture"). The Sculpture is located on a parcel of land owned by the Donor that is being sold or otherwise disposed of by the Donor and the Donor has elected to donate the Sculpture to the City for relocation to a location within the City to be selected by the City in its sole and exclusive discretion. The City has agreed to accept the gift of the Sculpture in accordance with the term of this Agreement.

NOW, THEREFORE, the Donor and the City, intending to be legally bound by the terms of this Agreement, and for the purposes herein set forth, do hereby declare and agree as follows:

Section 1. Donation.

1.1 The Donor hereby donates, gifts, conveys, assigns and transfers to the City all of the Donor's right, title and interest in the Sculpture, together with all pumps, pipes, motors and other equipment that support the operation of the Sculpture at its current location (which ancillary personalty is deemed a part of the Sculpture and included in the definition thereof); to have and to hold unto the City absolutely.

1.2 The Donor represents and warrants that the Sculpture is free and clear of all liens and encumbrances.

1.3 The Sculpture is being conveyed in "AS IS, WHERE IS" condition and the Donor shall have no further responsibility with respect to the Sculpture except as expressly contained in this Agreement.

1.4 The Donor shall also make a donation of Twenty-five Thousand and no/100 (\$25,000.00) dollars to defray the actual out-of-pocket costs incurred by the City in relocating the Sculpture to a location within the City to be selected by the City in its sole and exclusive discretion and shall pay the actual out-of-pocket costs incurred by the City in restoring the real property previously occupied by the Sculpture to a reasonably serviceably condition as a surface parking area in keeping with the surrounding parking area. The City shall provide appropriate invoices for all such out-of-pocket costs associated with the restoration of the surface parking area and the Donor will remit the Twenty-five Thousand and no/100 (\$25,000.00) dollars donation and the other costs so incurred to the City within thirty days after receipt of each invoice.

1.5 The City and its employees, contractors and agents shall be entitled to reasonable access to the Donor's real property as necessary to conduct all activities reasonably required to remove the Sculpture from its current site and repair the areas vacated by the Sculpture or otherwise damaged by the removal. Such access shall be coordinated through the Donor's property manager to minimize inconvenience to the users of the Donor's real property adjacent to the Sculpture's current site.

1.6 The Donor will do, execute and deliver, or will cause to be done, executed and delivered, all such additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of this Agreement and to carry out the intent of the parties hereto.

Section 2. Obligations of the City.

2.1 The City shall have taken such action as is deemed proper or appropriate by its City Council to accept the gift described herein and shall evidence such acceptance by authorizing execution of this Agreement.

2.2 The City shall cause the Sculpture to be relocated in a reasonable manner, taking appropriate steps to protect the Sculpture during the relocation process, and within a reasonable time frame

2.3 The City shall provide reasonable recognition for the donation of the Sculpture by placing and maintaining a small plaque with appropriate language as to the donation by the Donor on or near the Sculpture after it is relocated.

2.4 Each party shall be solely liable for its own negligent acts or omissions arising out of, related to, or resulting from, directly or indirectly, the relocation of the Sculpture and the other activities of the City called for by this Agreement and any damages proximately caused by such negligent acts or omissions.

Section 3. Miscellaneous.

3.1 This Agreement and the agreements and instruments to be executed and delivered hereunder set forth the entire agreement of the parties with respect to the subject matter hereof and supersede and discharge all prior agreements (written or oral) and negotiations and all contemporaneous oral agreements concerning such subject matter and negotiations.

3.2 Unless expressly agreed in writing by the applicable party, neither the failure of nor any delay by any party to this Agreement to enforce any right hereunder or to demand compliance with its terms is a waiver of any right hereunder. No action taken pursuant to this Agreement on one or more occasions is a waiver of any right hereunder or constitutes a course of dealing that modifies this Agreement.

3.4 No amendment, modification or termination of this Agreement shall be binding on any party hereto unless it is in writing and is signed by the party to be charged.

3.4 This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterpart.

3.5 This Agreement shall be governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

WITNESSES:

Carin J. ...

AGFIRST FARM CREDIT BANK

By: _____
Its: _____

CITY OF COLUMBIA, SOUTH CAROLINA

By: *Steven A. Gantt*

Its: Steven A. Gantt
City Manager